

2021
CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2021

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2021 REGULAR SESSION
OF THE LEGISLATURE**

**PUBLISHED BY AUTHORITY OF
THE LEGISLATURE**

SUPPLEMENTING

Volume 4

Titles 13 and 15

(As Revised 2019)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher



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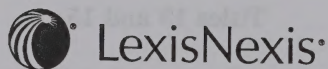
by

THE STATE OF MISSISSIPPI

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PUBLIC **User's Guide** WORD

See In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our subscribers by making our annotations more current, LexisNexis has changed the sources that are used to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2d
Mississippi College Law Review
Notre Dame Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been included for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing statutes.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed statutes, provide information on a portion of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Statutes

The 2021 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2021 Regular Legislative Session.

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Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2021 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2021

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SCHEDULE OF NEW SECTIONS

1972

There are no new sections added in this supplement.

VOLUME FOUR

TITLE 13.

EVIDENCE, PROCESS AND JURIES

CHAPTER 1.

EVIDENCE

IN GENERAL

§ 13-1-23. Presumption of death.

JUDICIAL DECISIONS

4. Rebuttal of presumption.

Chancery court properly denied a daughter's petition for the presumption of death of her father because the father had not been absent from or abandoned himself in the state for seven years continuously without being heard of since the record reflected that, while the father changed his name to "Harrington" approximately three years before his absence and his social security number remained the

same, he was present at the hearing and testified that was his intention in the record that the daughter attempted or requested to rebut Harrington's testimony and was denied, she failed to explain what evidence disappeared or was denied, and failed to explain how the chancery court alleged action precluded her case. *In re Johnson*, 312 So. 2d 705, 3021 Misc. LITIS 2 00004 3021X

CHAPTER 3.

PROCESS, NOTICE, AND PUBLICATION

§ 13-3-5. The summons.

JUDICIAL DECISIONS

1. In general.

Circuit court should have dismissed the complaint because the summons failed to substantially comply with the form required by subsection (c), although it did appear that an attorney the defendant would have had actual notice of the com-

plaint sufficient to answer it, actual knowledge by defendant of the pendency of a suit against him or he was summoned, unless there had been a legal excuse, such as a legal appearance. *Winter v. Jennings*, 312 So. 2d 3157, 3021 Misc. LITIS 2 00004 3021X

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**TITLE 13.
EVIDENCE, PROCESS AND JURIES**

**CHAPTER 1.
EVIDENCE
IN GENERAL**

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JUDICIAL DECISIONS

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Chancery court properly denied a daughter's petition for the presumption of death of her father because the father had not been absent from or concealed himself in the state for seven years successively without being heard of since the record reflected that, while the father changed his name to "Morningstar" approximately three years earlier, his residence and his social security number remained the

same, he was present at the hearing and testified, there was no indication in the record that the daughter attempted or requested to rebut Morningstar's testimony and was denied, she failed to explain what evidence disappeared or was defaced, and failed to explain how the chancery clerk's alleged actions prejudiced her case. *In re Johnson*, 312 So. 3d 709, 2021 Miss. LEXIS 2 (Miss. 2021).

**CHAPTER 3.
PROCESS, NOTICE, AND PUBLICATION**

§ 13-3-5. The summons.

JUDICIAL DECISIONS

1. In general.

Circuit court should have dismissed the complaint because the summons failed to substantially comply with the form required by subsection (b); although it did appear that an attorney, the defendant, could have had actual notice of the com-

plaint sufficient to answer it, actual knowledge by a defendant of the pendency of a suit against him or her was immaterial, unless there had been a legal summons or a legal appearance. *Webster v. Fannings*, 311 So. 3d 1157, 2021 Miss. LEXIS 37 (Miss. 2021).

§ 13-3-57. Service on nonresident business not qualified to do business in state; survival of cause of action in case of death or inability to act; service on nonresident executor, administrator, etc.

JUDICIAL DECISIONS

ANALYSIS

3. What constitutes doing business within state.
5. Illustrative cases.

3. What constitutes doing business within state.

In a case involving defendants who operated websites through which Mississippi customers could purchase alcoholic beverages, the Supreme Court found that the doing-business component of the state's long-arm statute was applicable to the defendants. While none of the defendants maintained a physical presence in Mississippi, they nonetheless conducted business in the state by means of their websites, which gave them a virtual presence in the state. *Fitch ex rel. State v. Wine Express Inc.*, 297 So. 3d 224, 2020 Miss. LEXIS 48 (Miss. 2020).

In a case involving defendants who operated websites through which Mississippi customers could purchase alcoholic

beverages, the Supreme Court found that each of the defendants had established sufficient minimum contacts with Mississippi and that those contacts related to the State's claims against the defendants. Regardless of the free on board contract terms used by the defendants in their sales contracts, the defendants stood ready and willing to do business with Mississippi residents, and knowingly did do business with Mississippi residents. *Fitch ex rel. State v. Wine Express Inc.*, 297 So. 3d 224, 2020 Miss. LEXIS 48 (Miss. 2020).

5. Illustrative cases.

Motor vehicle accident victim did not properly serve a foreign corporation doing business in Mississippi because the only attempt to serve the corporation was via certified mail on its registered agent, which was located in Mississippi. *Hadley v. FedEx Ground Package Sys., Inc.*, — So. 3d —, 2019 Miss. App. LEXIS 453 (Miss. Ct. App. Sept. 17, 2019).

CHAPTER 5.

JURIES

§ 13-5-23. Exemptions; length of service of tales and grand jurors.

JUDICIAL DECISIONS

1. In general.

Trial court did not abuse its discretion in denying a doctor's motion to quash the jury panel—when the doctor contended that the doctor was denied a fair trial in a medical malpractice action because the doctor, who was Caucasian, had an all-African-American venire in a county that was 25 percent Caucasian—because the

appellate court found no evidence showing any actual fraud, prejudice, or such a flagrant violation of duty as to amount to fraud. *Kronfol v. Johnson*, 283 So. 3d 1162, 2019 Miss. App. LEXIS 183 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 459 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 430 (Miss. 2019).

§ 13-5-26. Jury box; deposit of names drawn from jury wheel; drawing and assignment of jurors; use of computer or electronic device for random selection.

JUDICIAL DECISIONS

2. No deficiency in jury selection.

Jury was properly impaneled because the selected jurors were thoroughly questioned and deemed qualified for service

during the voir dire examination and prior to being sworn in. *Hall v. State*, 295 So. 3d 544, 2019 Miss. App. LEXIS 610 (Miss. Ct. App. 2019).

§ 13-5-87. Laws as to listing, drawing, summoning and impaneling of juries are directory.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. Review.

1. In general.

Trial court did not abuse its discretion in denying a doctor's motion to quash the jury panel—when the doctor contended that the doctor was denied a fair trial in a medical malpractice action because the doctor, who was Caucasian, had an all-African-American venire in a county that was 25 percent Caucasian—because the appellate court found no evidence showing any actual fraud, prejudice, or such a flagrant violation of duty as to amount to fraud. *Kronfol v. Johnson*, 283 So. 3d 1162, 2019 Miss. App. LEXIS 183 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 459 (Miss. 2019), cert. de-

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4. Review.

Although the circuit court deviated from a legal rule in the manner in which it selected alternate jurors, there was no proof that the error was prejudicial to defendant. Consequently, the appellate court found no plain error in the manner in which jury was selected that would require reversal of defendant's fondling conviction. *Giles v. State*, 282 So. 3d 519, 2019 Miss. App. LEXIS 294 (Miss. Ct. App. 2019).

TITLE 15.

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

Chapter 1.	Limitation of Actions.	15-1-1
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CHAPTER 1.

LIMITATION OF ACTIONS

Sec.	
15-1-83.	Limitations applicable to actions founded on real estate appraisal.
15-1-85.	Limitations applicable to actions founded on licensed real estate activities.

§ 15-1-3. Completion of limitation extinguishes right; partial payment.

JUDICIAL DECISIONS

4. Actions on mortgages and deeds of trust.

Chancery court properly dismissed a borrower's action to set aside a foreclosure sale by the lender's assignees because the trustee in the deed of trust was a necessary party where it was his actions that the the borrower challenged and complete relief could not be afforded without his participation as a party, the court could

not order the trustee to resume his role as trustee since the three-statute of limitations had run, the trustee noticed the sale of the property by posting the notice on the bulletin board of county courthouse, mailing notices to all known heirs of the the borrower, and publishing the notice in a newspaper. *Estate of Stephens v. Estate of Palmer*, — So. 3d —, 2021 Miss. App. LEXIS 273 (Miss. Ct. App. June 29, 2021).

§ 15-1-7. Limitations applicable to actions to recover land.

JUDICIAL DECISIONS

13. When limitation period runs, generally.

14. —Particular cases.

Because a case was undisputedly an action to recover land and for the imposition of a constructive trust, the proper statutes of limitations to be applied granted ten years of time, not three; under

the statutes of limitations applicable to the case, all of the facts were within the ten-year period, and thus, case was not time-barred. *White v. White*, — So. 3d —, 2019 Miss. App. LEXIS 618 (Miss. Ct. App. May 21, 2019), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS 111 (Miss. 2020), cert. dismissed, 291 So. 3d 1111, 2020 Miss. LEXIS 196 (Miss. 2020).

§ 15-1-9. Limitations applicable to suits in equity to recover land.

JUDICIAL DECISIONS

6. Running of limitations period, generally.

8. —Particular cases.

Because a case was undisputedly an action to recover land and for the imposition of a constructive trust, the proper statutes of limitations to be applied granted ten years of time, not three; under

the statutes of limitations applicable to the case, all of the facts were within the ten-year period, and thus, case was not time-barred. *White v. White*, — So. 3d —, 2019 Miss. App. LEXIS 618 (Miss. Ct. App. May 21, 2019), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS 111 (Miss. 2020), cert. dismissed, 291 So. 3d 1111, 2020 Miss. LEXIS 196 (Miss. 2020).

§ 15-1-13. Ten years' adverse possession gives title; exceptions.

JUDICIAL DECISIONS

ANALYSIS

1. Possession in general.
2. —Nature of possession, generally.
28. Running of limitation period.
29. Evidence, generally.
33. —Particular cases, evidence sufficient.

1. Possession in general.

2. —Nature of possession, generally.

It was error to find developers adversely possessed real property because the developers' possession was subject to a promissory note and deed of trust. *Ray v. O'Possum Ridge Farms*, 289 So. 3d 319, 2019 Miss. App. LEXIS 580 (Miss. Ct. App. 2019).

28. Running of limitation period.

Property owners' adverse possession claim failed because the owners were bound by the doctrine of collateral estoppel to the determination in a prior lawsuit that the subject property was a public

road and that the county board of supervisors had not abandoned it. Furthermore, after the board of supervisors subsequently abandoned the road, less than the required 10 years ran before the owners brought their adverse possession claim. *Smith v. Sims*, 281 So. 3d 1069, 2019 Miss. App. LEXIS 234 (Miss. Ct. App. 2019).

29. Evidence, generally.

33. —Particular cases, evidence sufficient.

Neighbors proved a claim of ownership of disputed land by adverse possession by clear and convincing evidence because, inter alia, the neighbors proved the neighbors exercised exclusive possession of the land for more than ten years by leasing the land for 33 years, before which the neighbors' family had farmed the land. *Anderson v. Fisher*, 296 So. 3d 124, 2019 Miss. App. LEXIS 578 (Miss. Ct. App. 2019), cert. denied, 293 So. 3d 834, 2020 Miss. LEXIS 231 (Miss. 2020).

§ 15-1-21. Actions on mortgages, deeds of trust, and statutory liens to be brought within time allowed for action upon writing in which debt is specified.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to en-

force a foreign judgment. *Coleman v. WGST, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 15-1-29. Limitations applicable to actions on accounts and unwritten contracts.

JUDICIAL DECISIONS

12. Running of limitation period.

Because the cause of action for breach of the June 23, 2008, loan agreement did not accrue until appellant breached the agreement by failing to make repayment on September 21, 2008, and appellee filed suit on September 16, 2011, within three years of that breach, appellee filed her complaint within the applicable limitations period. *Robinson v. Singh*, 303 So. 3d 65, 2020 Miss. App. LEXIS 126 (Miss. Ct. App.), cert. denied, 303 So. 3d 420, 2020 Miss. LEXIS 364 (Miss. 2020).

will argued that any debt that the beneficiary owed the decedent as stated in a document was more than three years old and, therefore, any collection of that debt was barred by the statute of limitations, the beneficiary argument was misplaced. The decedent's estate was not trying to collect any amount from the beneficiary, but, rather, the estate was simply trying to deduct that debt from the beneficiary's share of the inheritance. *Walker v. Brown (In re Estate of Walker)*, 296 So. 3d 780, 2020 Miss. App. LEXIS 306 (Miss. Ct. App. 2020).

15. Miscellaneous.

Although a beneficiary of the decedent's

§ 15-1-35. Limitations applicable to actions for certain torts.

JUDICIAL DECISIONS

ANALYSIS

- 2. Applicability.
- 4. Assault and battery.
- 5. Slander and libel.
- 10. Intentional infliction of emotional distress.

2. Applicability.

Circuit court was correct in allowing an insured's abuse of process and intentional infliction of emotional distress claims to proceed because the actions at issue did not fall within the specific subjects expressed within Miss. Code Ann. § 15-1-35 but fit comfortably within the general

clause expressed by Miss. Code Ann. § 15-1-49; the insured's action was timely because it was filed well-within by the three-year statute of limitations established by § 15-1-49. *Geico Cas. Co. v. Stapleton*, 315 So. 3d 464, 2021 Miss. LEXIS 100 (Miss. 2021).

Detainee's claims of assault, battery, false arrest, and slander, to the extent they alleged conduct by the sheriff that would fall outside of the MTCA, were barred by this section. *Burnett v. Hinds Cty.*, 313 So. 3d 471, 2020 Miss. LEXIS 357 (Miss. 2020) *Burnett v. Hinds Cty.*, 313 So. 3d 471, 2020 Miss. LEXIS 357 (Miss. 2020).

4. Assault and battery.

Trial court properly granted summary judgment in favor of defendant based on the one-year statute of limitations for assault and battery claims under because plaintiff waited more than two years before he sued defendant, as plaintiff charged that defendant intentionally struck him in the face and defendant said the same during his deposition and pleaded guilty to simple assault. *Evans v. Shucker's Piano & Oyster Bar, Inc.*, 281 So. 3d 302, 2019 Miss. App. LEXIS 144 (Miss. Ct. App. 2019).

5. Slander and libel.

Libel claims which tenant sought to add to tenant's counterclaim by motion to amend were barred by the statute of limitations because the landlord's emails that served as the initial basis for the motion to amend had been in the possession of the tenant for over a year prior to the tenant's motion to amend. *Holcomb, Dunbar, Watts, Best, Masters & Golmon, P.A. v. 400 S. Lamar Oxford Mad Hatter Partners, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 212 (Miss. Ct. App. May 18, 2021).

Libel claims which tenant sought to add

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10. Intentional infliction of emotional distress.

Supreme court overrules *Jones v. Fluor Daniel Services Corp.*, 32 So. 3d 417 (Miss. 2010), because it judicially expanded the one-year statute of limitations in Miss. Code Ann. § 15-1-35 to include torts beyond the ones chosen by the Legislature and return to the supreme court's original interpretation as stated in *Norman v. Bucklew*, 684 So. 2d 1246, 1256 (Miss. 1996); intentional and/or negligent infliction of emotional distress claims are governed by the three-year statute of limitations. *Geico Cas. Co. v. Stapleton*, 315 So. 3d 464, 2021 Miss. LEXIS 100 (Miss. 2021).

§ 15-1-36. Limitations applicable to malpractice action arising from medical, surgical or other professional services.

JUDICIAL DECISIONS

ANALYSIS

3. Applicability.
4. Discovery rule.
6. Particular cases.

3. Applicability.

In their motion for additional discovery, appellants argued that they needed to secure the hospital's policies and procedures to support what they characterized as their claims of administrative negligence; however, the trial court correctly found that these claims were in fact claims of medical negligence. *Webb v. Forrest Gen. Hosp.*, 301 So. 3d 695, 2020 Miss. App. LEXIS 109 (Miss. Ct. App. 2020).

4. Discovery rule.

Circuit court properly found that, as of

May 30, 2013, plaintiff knew or reasonably should have known of defendant's alleged negligence as the autopsy report did not reveal any act, omission, or neglect by defendant that would have been otherwise known or suspected. The circuit court correctly held the discovery rule did not toll the two-year statute of limitations for the month and two days that plaintiff was waiting on the autopsy report. *Roberson v. Amory HMA LLC*, 302 So. 3d 660, 2020 Miss. App. LEXIS 57 (Miss. Ct. App.), cert. denied, 302 So. 3d 643, 2020 Miss. LEXIS 351 (Miss. 2020).

6. Particular cases.

In a case in which the medical student was injured during a clinical skills assessment following the administration of a sacral spring test, the student's claim

sounded in medical malpractice because her complaint alleged that she was injured while under her assistant professor's medical care; the professor, who was a doctor, evaluated the student for sacroiliac joint pain and rendered treatment to her; and, although the student and professor shared a student-teacher relationship, rather than a doctor-patient relationship, the professor depended on his specialized knowledge and skill to render the sacral spring test to the student. *Murphy v. William Carey Univ.*, 314 So. 3d 112, 2020 Miss. App. LEXIS 462 (Miss. Ct. App. 2020), cert. denied, 314 So. 3d 1161, 2021 Miss. LEXIS 96 (Miss. 2021).

In a medical-malpractice suit, summary judgment was properly granted in favor of the nurse practitioner and the medical

center as the two-year statute-of-limitations period had expired on the patient's claim because no dispute existed that on September 23, 2014, the patient learned that she had a tendon dysfunction and stress fracture in her ankle that had remained previously undiagnosed despite her prior medical treatment, and that her tendon dysfunction and stress fracture would require additional treatment, possibly including surgery; thus, the patient's claim began to run on September 23, 2014, and had already expired when she provided the nurse practitioner and the medical center with pre-suit notice on October 14, 2016. *Hawkins v. Jones*, 284 So. 3d 827, 2019 Miss. App. LEXIS 547 (Miss. Ct. App. 2019).

§ 15-1-43. Limitations applicable to actions founded on domestic judgments or decrees; renewal of judgment or decree; notice of renewal.

JUDICIAL DECISIONS

ANALYSIS

2. Applicability.
5. Computation of limitation period.

2. Applicability.

Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. *Coleman v. WGST, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

5. Computation of limitation period.

Wife filed her contempt action within

seven years after husband breached the property settlement agreement by allowing his insurance policy to lapse in 2013, and thus wife's action was not barred by the statute of limitations; husband's argument that wife's claim was barred by the three-year statute of limitations applicable to claims for breach of contract lacked merit. *Siders v. Zickler*, 312 So. 3d 1224, 2021 Miss. App. LEXIS 106 (Miss. Ct. App. 2021).

§ 15-1-45. Limitations applicable to actions founded on foreign judgments or decrees.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Limitation period as to residents.

1. In general.

Claimant's causes of action seeking to

enforce a foreign judgment were time-barred under the applicable statutes of limitation because the claimant did not file the complaint within seven years of the foreign judgment. Furthermore, enrolling a foreign judgment did not reset the applicable statute of limitations pe-

riod. *Coleman v. WGST, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

Circuit court erred in denying a former wife's motion to set aside a foreign judgment ordering her to pay a former husband because the statute of limitations had lapsed; the judgment was intended to be a continuation of the divorce proceeding and, therefore, was not enrolled before the statute of limitations lapsed. *White v. Taylor*, 281 So. 3d 1188, 2019 Miss. App. LEXIS 261 (Miss. Ct. App. 2019).

2. Limitation period as to residents.

Circuit court properly granted the judg-

ment debtors' motion for relief from judgment in the judgment creditor's action to execute on a foreign judgment and garnish assets belonging to the judgment debtors because the seven-year statute of limitations for judgments from foreign jurisdictions had expired where the judgment creditor enrolled a judgment 10 years after its rendition and three years after the statute of limitations in Mississippi had expired. *Will Realty, LLC v. Isaacs*, 296 So. 3d 80, 2020 Miss. LEXIS 130 (Miss. 2020).

§ 15-1-47. Lien of judgments limited.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to en-

force a foreign judgment. *Coleman v. WGST, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

ANALYSIS

1. [Reserved for future use.]
2. In general.
4. —Applicability.
15. Torts, generally.
17. — Personal injuries.
19. —Infliction of emotional distress.
27. Running of limitation period, generally.
28. — Accrual of cause of action; miscellaneous.
29. — —Real property, deeds, etc.
32. — —Banking.
38. — Tolling of statute.
39. Service of process
40. Particular cases; miscellaneous.
42. —Real property, deeds, etc.

1. [Reserved for future use.]
[Reserved for future use.]

2. In general.

4. —Applicability.

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Statute was not applicable when a claimant's causes of action sought to enforce a foreign judgment. *Coleman v. WGST, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

15. Torts, generally.

In a case in which plaintiff filed a complaint in 2019 alleging that he had been sexually abused by a priest in 1984 and 1985 when plaintiff was twelve to thirteen years old, the Supreme Court concluded that the trial court erred by finding that plaintiff failed to state a claim. Whether

plaintiff knew or reasonably should have known about the injury was a question of fact for the jury. *McGowen v. Roman Catholic Diocese of Biloxi*, — So. 3d —, 2021 Miss. LEXIS 159 (Miss. June 17, 2021).

Circuit court did not err by granting partial summary judgment in favor of neighboring property owners because a developer's conspiracy claim fell outside the statute of limitations; the continuing tort doctrine did not apply because the alleged harm reverberated from a single, one-time act or omission. *Jourdan River Estates, LLC v. Favre*, 278 So. 3d 1135, 2019 Miss. LEXIS 345 (Miss. 2019).

17. — Personal injuries.

Trial court properly granted a convenience store's motion to dismiss a customer's premises liability complaint—she slipped on a large puddle of standing water and fell, injuring her neck and back—with prejudice because it was not filed within the three-year statute of limitations, and none of the facts she stated regarding service of the first complaint on an incorrect agent were in the record. *McNair v. J.F.M., Inc.*, — So. 3d —, 2021 Miss. App. LEXIS 303 (Miss. Ct. App. July 27, 2021).

19. — Infliction of emotional distress.

Circuit court was correct in allowing an insured's abuse of process and intentional infliction of emotional distress claims to proceed because the actions at issue did not fall within the specific subjects expressed within Miss. Code Ann. § 15-1-35 but fit comfortably within the general clause expressed by Miss. Code Ann. § 15-1-49; the insured's action was timely because it was filed well-within by the three-year statute of limitations established by § 15-1-49. *Geico Cas. Co. v. Stapleton*, 315 So. 3d 464, 2021 Miss. LEXIS 100 (Miss. 2021).

Supreme court overrules *Jones v. Fluor Daniel Services Corp.*, 32 So. 3d 417 (Miss. 2010), because it judicially expanded the one-year statute of limitations in Miss. Code Ann. § 15-1-35 to include torts beyond the ones chosen by the Legislature and return to the supreme court's original interpretation as stated in *Nor-*

man v. Bucklew, 684 So. 2d 1246, 1256 (Miss. 1996); intentional and/or negligent infliction of emotional distress claims are governed by the three-year statute of limitations. *Geico Cas. Co. v. Stapleton*, 315 So. 3d 464, 2021 Miss. LEXIS 100 (Miss. 2021).

27. Running of limitation period, generally.

28. — Accrual of cause of action; miscellaneous.

Client's legal malpractice case against the client's attorney in the client's divorce case was time-barred because the client waited over three years from learning of a discrepancy in the financial status of the client's former spouse before filing suit against the client's attorney in the divorce case for the attorney's alleged failure to investigate the spouse's finances. *Nail v. Wright*, 302 So. 3d 1268, 2020 Miss. App. LEXIS 514 (Miss. Ct. App. 2020).

University graduate's contract and tort related claims against the university from which the graduate obtained a master's degree were barred by the three-year statute of limitations because any alleged cause of action which the graduate may have had against the university accrued, at the very latest, upon graduation, but the graduate waited until eleven years later to file the complaint against the university and failed to show that the statute of limitations was tolled. *McGee v. Jackson State Univ.*, 282 So. 3d 678, 2019 Miss. App. LEXIS 362 (Miss. Ct. App. 2019).

29. — Real property, deeds, etc.

Grantor's claim for the value of the trees cut was not time-barred because the amended complaint adding the claim was filed within the three-year limitations period that began running when the timber was cut; the Mississippi catch-all limitations provision applied to the grantor's claim for actual damage for the timber cutting. *Alexander v. Musgrove*, 311 So. 3d 668, 2021 Miss. App. LEXIS 3 (Miss. Ct. App. 2021).

Statute of limitations did not bar a commercial landlord's action against a tenant for rent for a month-to-month ten-

ancy that arose following the expiration of the lease, as the limitations period accrued or began to run as each monthly installment became due and was not paid. *Rivers v. Delta Plaza Llc*, 301 So. 3d 742, 2020 Miss. App. LEXIS 438 (Miss. Ct. App. 2020).

Because a case was undisputedly an action to recover land and for the imposition of a constructive trust, the proper statutes of limitations to be applied granted ten years of time, not three; under the statutes of limitations applicable to the case, all of the facts were within the ten-year period, and thus, case was not time-barred. *White v. White*, — So. 3d —, 2019 Miss. App. LEXIS 618 (Miss. Ct. App. May 21, 2019), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS 111 (Miss. 2020), cert. dismissed, 291 So. 3d 1111, 2020 Miss. LEXIS 196 (Miss. 2020).

32. — Banking.

Trial court abused its discretion in failing to set aside the entry of default because a bank presented a reasonable, colorable defense on the merits regarding a debt-collection company's notice of overdraft charges and whether a significant portion of the company's claims were time barred by the applicable three-year statute of limitations; daily notices and monthly bank statements reflecting the overdraft charges were mailed to the company in 2006, and it filed its complaint in 2010. *Franklin Collection Serv. v. Bancorpsouth Bank*, 275 So. 3d 1048, 2019 Miss. LEXIS 206 (Miss. 2019).

38. — Tolling of statute.

In an action alleging a financial advisor's alleged malfeasance, the statute of limitations period was tolled until plaintiffs' leaned of the advisor's potential wrongdoing and that the losses might be actionable because plaintiffs asked the advisor about the sizable losses they saw in their accounts, exercising reasonable diligence in seeking information about their losses, and were told that everything was fine, and that their accounts would fully recover. *Baker v. Raymond James & Assocs.*, — So. 3d —, 2020 Miss. App. LEXIS 110 (Miss. Ct. App. Apr. 7, 2020), rev'd, 312 So. 3d 720, 2021 Miss. LEXIS 52 (Miss. 2021).

In a former employee's Title VII gender discrimination and retaliation suit, the employer's counterclaims against a lawyer and a law firm alleging fraudulent concealment and violation of a duty to disclose arising from their actions on behalf of the former employee were precluded by the three year limitations period of Miss. Code § 15-1-49 because the counterclaims were filed more than three years after the employer's discovery of these claims and three year period and the limitations period was not tolled by the fraudulent concealment doctrine. *Snider v. L-3 Communs. Vertex Aero., L.L.C.*, 946 F.3d 660, 2019 U.S. App. LEXIS 38766 (5th Cir. Miss. 2019)

39. Service of process

Circuit court properly dismissed an injured driver's claims against a delivery company and an employee for insufficient service of process and denied his motion to amend his complaint to add the employee's actual employer as a defendant because the driver did not properly serve the company within the 120-day deadline, the company did not attempt to evade process or mislead the driver, he only attempted to serve the employee by publication and failed to do so in compliance with the Rules, the three-year statute of limitations ran before the employee was properly served, the driver failed to obtain a ruling on his motion for extension and failed to demonstrate good cause for extension, and the motion for leave to amend the complaint was moot. *Hadley v. FedEx Ground Package Sys.*, — So. 3d —, 2019 Miss. App. LEXIS 178 (Miss. Ct. App. Apr. 30, 2019), cert. denied, 284 So. 3d 752, 2019 Miss. LEXIS 437 (Miss. 2019), modified, — So. 3d —, 2019 Miss. App. LEXIS 453 (Miss. Ct. App. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 456 (Miss. 2019).

40. Particular cases; miscellaneous.

If claims were barred as a matter of law by the Mississippi statute of limitations, then those claimants' requests for relief from the Bar Date made no difference, because there were no valid claims for which any bankruptcy relief or recovery would be available. In *re Tronox Inc.*, —

B.R. —, 2021 Bankr. LEXIS 577 (Bankr. S.D.N.Y. Mar. 10, 2021).

Appellant argued that even though the trial court ruled that the general three-year limitations period applied to appellee's claims, the chart included calculations from a seven-month period that fell outside the statute-of-limitations period, yet the trial court did not strike those particular calculations or provide for any other adjustment or explanation to the jury; the chart should not have been allowed into evidence. *Waste Mgmt. of Miss. v. Jackson Ramelli Waste LLC*, — So. 3d —, 2019 Miss. App. LEXIS 373 (Miss. Ct. App. Aug. 6, 2019), rev'd, 301 So. 3d 635, 2020 Miss. LEXIS 340 (Miss. 2020).

42. —Real property, deeds, etc.

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the chancery court did not err in granting summary judgment in favor of the neighbors as the homeowner's claim against the neighbors was barred by the three-year statute of limitations because the latest date on which the homeowner discovered the injury was July 3, 2010 - the date of the second flooding incident; and the homeowner amended his suit to add the neighbors as defendants on April 29, 2014, well over three years later. *Milam v. Kelly*, 282 So. 3d 682, 2019 Miss.

App. LEXIS 361 (Miss. Ct. App. 2019), cert. denied, 289 So. 3d 311, 2020 Miss. LEXIS 65 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 213 (Miss. 2020).

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the continuing torts doctrine did not apply because the flooding of the homeowner's home constituted a continual ill effect, not a continual unlawful act. *Milam v. Kelly*, 282 So. 3d 682, 2019 Miss. App. LEXIS 361 (Miss. Ct. App. 2019), cert. denied, 289 So. 3d 311, 2020 Miss. LEXIS 65 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 213 (Miss. 2020).

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the three-year statute of limitations was not tolled based on the doctrine of fraudulent concealment because the homeowner failed to present evidence showing that the neighbors were aware that their wooden fence and landscaping were the cause of the flash flooding; and the homeowner presented no evidence of an affirmative act by the neighbors to prevent the discovery of his claim. *Milam v. Kelly*, 282 So. 3d 682, 2019 Miss. App. LEXIS 361 (Miss. Ct. App. 2019), cert. denied, 289 So. 3d 311, 2020 Miss. LEXIS 65 (Miss. 2020), cert. denied, — So. 3d —, 2020 Miss. LEXIS 213 (Miss. 2020).

§ 15-1-65. Action barred in another jurisdiction barred here.

JUDICIAL DECISIONS

1. In general.

Statute was not applicable when a claimant's causes of action sought to en-

force a foreign judgment. *Coleman v. WGST, LLC*, — So. 3d —, 2021 Miss. App. LEXIS 205 (Miss. Ct. App. May 11, 2021).

§ 15-1-67. Effect of fraudulent concealment of cause of action.

JUDICIAL DECISIONS

7. Evidence.

In a case in which the homeowner suffered recurring problems with flash flooding, which caused water to enter his home, the three-year statute of limitations was not tolled based on the doctrine of fraudulent concealment because the

homeowner failed to present evidence showing that the neighbors were aware that their wooden fence and landscaping were the cause of the flash flooding; and the homeowner presented no evidence of an affirmative act by the neighbors to prevent the discovery of his claim. *Milam*

v. Kelly, 282 So. 3d 682, 2019 Miss. App. 65 (Miss. 2020), cert. denied, — So. 3d —, LEXIS 361 (Miss. Ct. App. 2019), cert. 2020 Miss. LEXIS 213 (Miss. 2020). denied, 289 So. 3d 311, 2020 Miss. LEXIS

§ 15-1-83. Limitations applicable to actions founded on real estate appraisal.

(1) An action based on a real estate appraisal by a person who is or was licensed, certified or registered under Title 73, Chapter 34, Mississippi Code of 1972, on the date of the appraisal must be commenced against the licensed real estate appraiser, certified residential appraiser, certified general real estate appraiser or appraiser trainee who performed the appraisal, or the appraiser's or appraiser trainee's employer, or a firm with which the appraiser or appraiser's trainee is affiliated, or the lender or appraisal management firm that ordered the appraisal, within five (5) years after the date the appraisal was relied upon or utilized by an intended user or within the time prescribed in Section 15-1-49, whichever is earlier.

(2) This section is inapplicable to any action arising from a real estate appraisal where the licensed real estate appraiser, certified residential appraiser, certified general real estate appraiser, appraiser trainee, the appraiser's or appraiser trainee's employer, a firm with which the appraiser or appraiser's trainee is affiliated, or the lender or appraisal management firm that ordered the appraisal fraudulently inflated the value of the property or colluded with others to fraudulently inflate the value of the property.

HISTORY: Laws, 2020, ch. 377, § 1, eff from and after July 1, 2020.

Cross References — Limitations applicable to actions founded on licensed real estate activities, see § 15-1-85.

§ 15-1-85. Limitations applicable to actions founded on licensed real estate activities.

(1) An action based on actions or omissions to act by a person who is or was licensed as a broker or salesperson under the Real Estate Brokers License Law of 1954, Title 73, Chapter 35, Mississippi Code of 1972, must be commenced against the licensed or formerly licensed person, or a firm with which said person is affiliated, within five (5) years after the date of the consummation of the transaction out of which the action arose or, if not consummated, the date on which the agency relationship out of which the action arose ceased to exist, or within the time prescribed in Section 15-1-49, whichever is earlier, or the date a broker price opinion was relied upon by an intended user.

(2) This section is inapplicable to any action arising from actions or omissions to act by a person who is or was licensed as a broker or salesperson, or a firm with which said person is or was affiliated, where that person or firm fraudulently inflated the value of the property or colluded with others to fraudulently inflate the value of the property.

HISTORY: Laws, 2020, ch. 377, § 2, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in subsection (1) by substituting “Title 73, Chapter 35, Mississippi Code of 1972” for “Title 15, Chapter 1, Mississippi Code of 1972.” The Joint Committee ratified the correction at its October 19, 2020, meeting.

Cross References — Limitations applicable to actions founded on real estate appraisal, see § 15-1-83.

CHAPTER 3. PREVENTION OF FRAUDS

ARTICLE 1. IN GENERAL.

§ 15-3-1. Certain contracts to be in writing.

JUDICIAL DECISIONS

ANALYSIS

- 5. Sufficiency of writing, generally.
- 21. Sale or lease of land, generally.
- 24. —Oral promises and contracts.
- 34. —Leases.

5. Sufficiency of writing, generally.

In a breach of contract action stemming from a proposed real estate development, while the agreement was in writing, it failed to sufficiently describe the land to be conveyed, and thus, it was unenforceable under the statute of frauds. *Hughes v. Shipp*, — So. 3d —, 2020 Miss. App. LEXIS 535 (Miss. Ct. App. Sept. 15, 2020).

21. Sale or lease of land, generally.

24. —Oral promises and contracts.

Circuit court erroneously denied an evictee any opportunity in an eviction action to demonstrate the elements of equitable estoppel based upon the statute of frauds because the evictee sought to demonstrate that the evictee and the property owner had an oral agreement that the evictee’s monthly payments to the owner were to purchase the property as a co-owner of the property. *Beckworth v. Beckworth*, 312 So. 3d 391, 2021 Miss. App. LEXIS 90 (Miss. Ct. App. 2021).

Circuit court properly affirmed a county court’s judgment in favor of the plaintiff in her action for breach of contract and the duty of good faith and fair dealing, awarded her damages, and ordered the defendant to deed the property to the plaintiff because the property was not subject to the statute of frauds, the county court correctly assessed the damages owed to put the plaintiff in the position she would have been but for the breach, the defendant admitted that she did not object to the entry of evidence concerning transfer of the property to stop the continued accrual of damages. *Williams v. Carriere*, — So. 3d —, 2021 Miss. App. LEXIS 276 (Miss. Ct. App. June 29, 2021).

Mother’s breach-of-contract claim was barred by the Statute of Frauds because there was no written agreement regarding a son’s promise to transfer title to the mother upon full payment of a promissory note and deed of trust; the application of the Statute of Frauds meant two of the mother’s other assignments of error also failed, and thus, the chancery court properly denied her request for an injunction and dismissed her demand for a lien against the property. *White v. White*, — So. 3d —, 2019 Miss. App. LEXIS 618 (Miss. Ct. App. May 21, 2019), cert. dismissed, — So. 3d —, 2020 Miss. LEXIS

111 (Miss. 2020), cert. dismissed, 291 So. 3d 1111, 2020 Miss. LEXIS 196 (Miss. 2020).

34. —Leases.

To the extent that a warehouse owner attempted to rely on a proposed sub-sublease for one-third of the warehouse was evidence of an agreement to split the costs

of the sublease, the draft sub-sublease between produce distributors was for a five-year term. Accordingly, any attempt to enforce such an obligation was barred by the Mississippi Statute of Frauds. *Boyanton v. Bros. Produce, Inc.*, 312 So. 3d 363, 2020 Miss. App. LEXIS 501 (Miss. Ct. App. 2020), cert. denied, 312 So. 3d 730, 2021 Miss. LEXIS 66 (Miss. 2021).

